REMARKS

In **Paragraph 1**, the Examiner notes that this is a non-final office action on the merits and further indicates that Claims **1-15** are currently pending in the application. It is noted that Claims **1, 10,** and **13** are independent claims.

No response by applicant is believed to be required or expected in regards to this paragraph. However, it should be noted that the instant Office Action Response cancels Claim **10** and introduces a new independent Claim **16**.

In **Paragraph 2**, the Examiner indicates that applicant's information disclosure statement (IDS) has been received, entered, and is being considered by the Examiner.

No response by applicant is believed to be required or expected in regards to this paragraph.

CLAIM OBJECTIONS AND REJECTIONS

Objections Concerning the Claims

In **Paragraph 3**, the Examiner requests that a typographical correction be made to Claim **10**.

Claim **10** has been cancelled *supra* and, as such, the Examiner's suggested modification has been made moot.

Claim Rejections under 35 USC 112

Paragraph 4 contains a recitation of a portion of 35 USC 112. No response by the applicants is believed to be necessary or expected.

In **Paragraph 5**, it is said that Claim **10** recites the limitation "said location values" (line 11) and it is said that there is insufficient antecedent basis for this limitation in the claim.

In response, attention is drawn to the fact that the applicant has cancelled Claim **10** and, thus, the issue raised in this paragraph has been made moot.

In **Paragraph 6** it is said that Claim **10** has been rejected under 35 USC 112, second paragraph, as being narrative and indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In response, attention is drawn to the fact that the applicant has cancelled Claim **10** and, thus, the issue raised in this paragraph has been made moot.

In **Paragraph 7** it is said that Claim **12** has been rejected under 35 USC 112, second paragraph, as being narrative and indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In response, attention is drawn to the fact that the applicant has cancelled Claim **12** and, thus, the issue raised in this paragraph has been made moot.

Claim Rejections under 35 USC 102

Paragraph 8 contains a recitation of a portion of 35 USC 102(e). No response by the applicants is believed to be necessary or expected.

In **Paragraph 9** it is said that Claims **1-9** and **13-15** are rejected under 35 USC 102(e) as being anticipated by Peliotis et al. (US 2002 /0065678), hereinafter Peliotis.

In reply, and for the reasons set out hereinafter, applicant believes that the instant rejection under Section 102(e) is improper and should be withdrawn.

In **Paragraph 10**, it is said that in considering independent Claim **1** Peliotis discloses a method for the presentation of a work to a user, comprising the steps of :

> ". . . (b) selecting at least one randomization position ('marker' within said base work ['—Marker generator 16 generates markers that mark the beginning/end of each video segment ... any method can be used for generating markers –', ¶0020, ¶0029];
>
> . . . (d) for any randomization position so selected, randomly selecting one of said plurality of alternative content segments replacing at least a portion of said base work during said performance ['—*Switcher 86 can also generate an alternate video signal 114 that comprises an alternate selection of video that can be used to replace excluded video segments during a real time broadcast*—', ¶0008, ¶0029]"

Page 4 of the Office Action. (Note that applicant reserves the right to contest others of the Examiner's correspondences (a) – (e) in future filings if such becomes necessary.)

In reply, applicant would strongly disagree with the previous characterization of Peliotis. In more particular, at no time does Peliotis teach or suggest that the selection between alternative content segments be *random*. In fact, it should be noted as an initial matter that none of the words "random", "randomize", "randomly", etc., appear within the Peliotis reference. Of course, this merely reflects Peliotis' stated focus on allowing an *end user* to have complete control his or her viewing experience (see, e.g., Peliotis ¶0007).

Peliotis' invention allows an end user to exclude (or, equivalently, request) certain types of broadcast subject matter from his or her living room. Peliotis' invention exists to so that a user *will never* be "surprised" by the materials that are viewable on his or her TV.

However, the goal of the instant invention is the opposite: namely, the instant invention randomly chooses among alternative content segments so that the user *will always* be surprised in some sense by the nature of the viewed video work. Because of the random nature of the instant invention, the viewer will never be certain which of many possible versions of the video work will be presented for viewing on a given occasion.

Peliotis never discloses or suggests that the selection of alternative content segments might be made randomly and, indeed, if that were done the user of Peliotis' invention might be unexpectedly presented with video segments containing adult language, violence, sexual innuendo, etc., which would be contrary to the stated purpose of the invention.

Finally, because Peliotis never randomly chooses from among a plurality of alternative content segments, Peliotis never chooses a "randomization position" as that term is used by the instant inventor.

Note that the Federal Circuit, in speaking of rejections under Section 102, has made it abundantly clear that :

> Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim.**

Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added).

Here, Peliotis fails to disclose any sort of randomizing mechanism for selecting alternative video segments and, as such, this reference does not disclose every limitation of the instant invention arranged as in the claim.

In **Paragraph 11**, it is said that in considering Claim **2** Peliotis discloses a microprocessor, computer memory, an output interface, and a display device.

In reply, and for at least all of the reasons set out above, applicant believes that the instant rejection of Claim **2** is improper. In more particular, Peliotis never discloses computer memory that contains programming instructions that define the method of Claim **1** and, more particularly, Peliotis does not suggest that these computer instructions might be used to randomly select among alternative content segments as is required by the instant invention.

Thus, applicant believes that the instant rejection under Section 102 is inappropriate and should be withdrawn.

In **Paragraph 12**, it is said that in considering Claim **3** Peliotis does not explicitly disclose computer memory in communication with a microprocessor, but the Examiner is said to

take Official Notice that at the time of the invention RAM, ROM, EPROM, PROM, and flash RAM were notoriously known as common types of memory to one of ordinary skill in the art.

In reply, and for at least all of the reasons set out above, applicant believes that the instant rejection of Claim 3 is improper. In more particular, Peliotis never discloses computer memory that contains programming instructions of any kind that define the method of Claim 1 and, more particularly, Peliotis does not suggest that these computer instructions might be used to randomly select among alternative content segments as is required by the instant invention.

Thus, applicant believes that the instant rejection under Section 102 is inappropriate and should be withdrawn.

In **Paragraph 13**, it is said that in considering Claim 4 Peliotis discloses that at least one of said alternative content segments is a content segment taken form said base work.

In reply, and for at least all of the reasons set out above, applicant believes that the instant rejection of Claim 4 is improper. In more particular, Peliotis never discloses or suggests a randomized selection system wherein one of the randomly chosen content segments is taken from the base work.

Thus, applicant believes that the instant rejection under Section 102 is inappropriate and should be withdrawn.

In **Paragraph 14**, it is said that in considering Claim 5 Peliotis discloses that the base work is selected from the group consisting of a movie, a video recording, a musical work or a computer game.

In reply, and for at least all of the reasons set out above, applicant believes that the instant rejection of Claim 5 is improper. In more particular, Peliotis never discloses or suggests a randomized selection system which operates on a work of the sort suggested above, i.e., a movie, video recording, etc.

Thus, applicant believes that the instant rejection under Section 102 is inappropriate and should be withdrawn.

In **Paragraph 15**, it is said that in considering Claim 6 Peliotis discloses that the base work may be displayed on a video display (e.g., television), wherein the alternative content segments replace at least a portion of the base work during the performance.

In reply, and for at least all of the reasons set out above, applicant believes that the instant rejection of Claim 6 is improper. In more particular, Peliotis never discloses or suggests a randomized selection system which displays the work on a video display and wherein the randomly selected alternative content sections replace at least a portion of the base work during the performance thereof.

Thus, applicant believes that the instant rejection under Section 102 is inappropriate and should be withdrawn.

In **Paragraph 16**, it is said that in considering Claim 7 Peliotis discloses a method that executes an interactive computer program until one of said randomization positions is reached and then executing any computer instructions contained within said selected alternative content segment.

In reply, and for at least all of the reasons set out above, applicant believes that the instant rejection of Claim 7 is improper. In more particular, Peliotis never discloses or suggests a randomized selection system that executes a computer program until one of said randomization positions is reached, *randomly* selects a content segment potentially containing additional computer instructions and then executes those computer instructions, if any.

Thus, applicant believes that the instant rejection under Section 102 is inappropriate and should be withdrawn.

In **Paragraph 17**, it is said that in considering Claim 8 Peliotis discloses a method that executes a video game / computer program until one of said randomization positions is reached and then executes any computer instructions contained within said selected alternative content segment.

In reply, and for at least all of the reasons set out above, applicant believes that the instant rejection of Claim 8 is improper. In more particular, Peliotis never discloses or suggests a randomized selection system for a computer program / video game that executes the game until one of said randomization positions is reached, *randomly* selects a content segment potentially containing additional computer instructions and then executes those computer instructions, if any.

Thus, applicant believes that the instant rejection under Section 102 is inappropriate and should be withdrawn.

In **Paragraph 18**, it is said that in considering Claim 9 Peliotis discloses defining a base work.

In reply, and for at least all of the reasons set out above, applicant believes that the instant rejection of Claim 9 is improper. In more particular, Peliotis never discloses or suggests a randomized selection system that defines a base work which is subsequently performed with randomly selected alternatively content sections replacing parts of the base work.

Thus, applicant believes that the instant rejection under Section 102 is inappropriate and should be withdrawn.

In **Paragraph 19**, it is said that, in considering independent Claim **13**, Peliotis discloses a method for the presentation of a work to a user, wherein is provided:

> ". . . • a logic tree (fig. 5 "video pointer table") associated with said base work, said logic tree defining at least one randomization point ("start"/"end") within said base work [¶0027];
>
> . . . (d) selecting randomly among said at least two alternative content segments associated with said randomization point [fig. 8, step 168, ¶0032]"

Pages 7 and 8 of the Office Action. (Note that applicant reserves the right to contest others of the Examiner's correspondences (a) – (f) in future filings if such becomes necessary.)

In reply, and as has been discussed previously, at no time does Peliotis teach or suggest the use of a logic tree to define the key aspects of a playback scheme, wherein alternative content is *randomly* selected from among a plurality of alternative content segments. Thus, Peliotis does

not disclose every element of the instant invention arranged as in the claim as the Federal Circuit has mandated.

As a consequence, and for all of the reasons set out previously, it is believed that the instant rejection of Claim 13 pursuant to 13 USC 102 in view of Peliotis is improper and should be withdrawn.

In **Paragraph 20**, it is said that in considering Claim 14 Peliotis discloses a base work consisting of a movie, a video recording, a musical work, or a computer game [¶ 0020].

In reply, and for at least all of the reasons set out above, applicant believes that the instant rejection of Claim 14 is improper. In more particular, Peliotis never discloses or suggests a randomized system that is used to select among interchangeable content segments that are designed to replace sections of a predetermined base work. Note that that this statement is true if the base work is determined be a movie, a video recording, a musical work, a computer game, etc.

Thus, applicant believes that the instant rejection under Section 102 is inappropriate and should be withdrawn.

In **Paragraph 21**, it is said that in considering Claim 15 Peliotis discloses reading a base work into computer RAM [¶0025].

In reply, and for at least all of the reasons set out above, applicant believes that the instant rejection of Claim 15 is improper. In more particular, Peliotis never discloses or suggests a randomized selection system that is used to select among interchangeable content segments that

are designed to replace corresponding portions of a base work, wherein the base work is read into computer RAM.

Thus, applicant believes that the instant rejection under Section 102 is inappropriate and should be withdrawn.

Claim Rejections under 35 USC 103

Paragraph 22 contains a recitation of a portion of 35 USC 103(a). No response by the applicants is believed to be necessary or expected.

In **Paragraph 23** it is said that Claims **10-12** are rejected under 35 USC 102(e) as being unpatentable over by Peliotis et al. (US 2002 /0065678).

In reply, applicant would note that this rejection has been made moot by virtue of the cancellation of Claims **10-12** in this instant Office Action Response.

In **Paragraph 24** it is said that in considering independent Claim **10**, that Peliotis discloses a method of preparing a work for presentation to a user.

In reply, applicant would note that this rejection has been made moot by virtue of the cancellation of Claims **10-12** in this instant Office Action Response.

That being said, applicant does not concede that Peliotis suggests or discloses at least the following aspect of the instant invention

. . . (d4) said logic tree defining at least a portion of a playback algorithm wherein . . .

content segments are randomly selected during playback . . . [¶0008, ¶0029]."

Office Action at page 10.

As has been discussed previously, nowhere within Peliotis can this aspect of the instant invention be found.

In **Paragraph 25** it is said that in considering Claim **11**, while Peliotis does not explicitly disclose that the first and second computer media are one and the same, such would have been a matter of obvious engineering choice because the designs would be functionally equivalent as storage components for the base work whether they were separate or integral.

In reply, applicant would note that this rejection has been made moot by virtue of the cancellation of Claims **10-12** in this instant Office Action Response.

That being said, applicant does not concede that Peliotis suggests or discloses the randomized aspect of the instant invention.

In **Paragraph 26** is said that in considering Claim **12**, Peliotis discloses that the base work is selected from the group consisting of a movie, a video recording, a musical work or a computer game [¶0020].

In reply, applicant would note that this rejection has been made moot by virtue of the cancellation of Claims **10-12** in this instant Office Action Response.

That being said, applicant does not concede that Peliotis suggests or discloses the randomized aspect of the instant invention as embodied in a movie, video recording, musical work, computer game, etc.

In **Paragraph 27** it is noted that the prior art that has been made of record is considered pertinent to applicant's disclosure. No reply by applicant is believed to be expected or required.

New Claims

New Claims **16-20** have been offered by amendment above. Note that, as has been the case in the as-filed claim, Claim **16** also requires that a selection between alternative content segments be randomly made. Additionally, and as is fully disclosed at, for example, ¶ [31] of the instant specification, Claim **16** (and ever claim dependent therefrom) requires that the probabilities associated with the alternative selections be stored within the logic tree for subsequent recall and use when the random selection is made.

Neither Peliotis nor any other art of record discloses or suggests that the content segments might be selected randomly at each randomization point and, further, that the probabilities associated with each segment's selection be stored as part of a logic tree.

As a consequence, applicant believes that the new claims are allowable over Peliotis, both with respect to 35 USC 102 and 35 USC 103 and, as such, should be allowed and passed to issue.

* * *

In view of the foregoing, it is submitted that all of the claims as-amended herein are in condition for allowance. Early and favorable action is, therefore, earnestly solicited.

Respectfully submitted,

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